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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 595

ANNA LEE SHELTON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals for the Sixth Circuit
and
BRIEF IN SUPPORT THEREOF

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To the Honorable Harlan Fiske Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Anna Lee Shelton, in support of her petition for a writ of certiorari to review the final judgment of the United States Circuit Court of Appeals for the Sixth Circuit entered on the 11th day of October, 1945, affirming her conviction of May 16, 1945, respectfully shows:

I
SUMMARY STATEMENT OF THE MATTERS INVOLVED

The Appellant, Anna Lee Shelton, was convicted on May 16, 1945 of possessing whiskey without the proper revenue stamps and was sentenced to one year at hard labor. See Transcript of Record, page 5. She was indicted on May 8, 1944, said indictment charging that on

the 12th day of December, 1943, in the Eastern District of Kentucky, one William M. Shelton, Anna Lee Shelton and Charlie Fenley Taylor unlawfully, willfully and feloniously did possess a quantity of distilled spirits, to-wit, 38 gallons more or less of whiskey without the immediate container thereof having affixed thereto a stamp denoting the quantity of the distilled spirits contained therein. On this indictment the jury returned a verdict of guilty and the petitioner was sentenced to one year in prison at hard labor.

Your petitioner appealed from the decision of the District Court to the United States Circuit Court of Appeals for the Sixth Circuit and on October 11, 1945, the Circuit Court of Appeals affirmed the judgment of the District Court and on the same day final judgment was rendered. See record, page 25.

II

JURISDICTION

(1) The date of the judgment to be reviewed is November 11, 1945, and this petition is filed within the time provided by law.

(2) The statutory provision which is believed to sustain the jurisdiction of this Court is Section 347 of Title 328 of the United States Code, (Acts of March 3, 1891, Chapter 517. Section 6, 26 Stat. 828; March 3, 1911, ch. 231, sec. 240, 36 Stat. 1157; February 13, 1925, ch. 229, sec. 1, 43 Stat. 938; January 31, 1928, ch. 14, sec. 1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 926).

III

SPECIFICATION OF ERRORS

(1) The United States Circuit Court of Appeals erred in affirming the judgment of the District Court in over-

ruling defendant's motion to suppress the evidence herein, for the reason that said evidence was obtained by unlawful search and seizure in that it was procured by stopping defendant's automobile between Pineville and Corbin, Kentucky, and searching same when the agents for the Alcohol Tax Unit had no information that said automobile on said occasion was being used for the purpose of violating the law, that all of the information which the Government agents had is included in the statement of Investigator Scanlan and the further testimony of Investigator Howard. See Record, page 15, 16 and 17.

(2) The Court erred in refusing to require the witness, Chad Howard, in said case, to reveal the source of his information on which he made the search and arrest.

(3) The Court erred in not sustaining the motion of defendant to strike the evidence of said Chad Howard from the record.

(4) The Circuit Court of Appeals erred in affirming the District Court's refusal to grant a new trial on the ground that such information, if any, which the agents testified they had received was not against this appellant but against one William Shelton, the brother of this appellant and that the information obtained against William Shelton was not probable cause for searching the automobile driven by this appellant, that Article 6 of the Bill of Rights of the Constitution of the United States provides among other things that this defendant has a right to be faced with the witnesses who accuse her and that the effect of the Court's ruling in this case is to deny to this appellant her rights under Articles 4 and 6 of the Bill of Rights of the Constitution of the United States.

IV
REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

(1) Article 4 of the Bill of Rights of the Constitution of the United States provides as follows:

> "The right of the people to secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The witnesses for the Government secured such information as they had against one William Shelton on October 22, 1943 and later on December 12, 1943, stopped and searched the car driven by this appellant without any information against this appellant and without probable cause for making said search and seizure, all in violation of the above Section of the Constitution of the United States.

(2) Article 6 of the Constitution of the United States provides as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense."

At the trial of appellant's case in the District Court, appellant through Counsel sought to learn the source of information about which Agent Howard testified and her

Constitutional rights were denied by the District Court in that she had no opportunity to be faced by the witness who accused her and to cross-examine said witness all in denial of the Constitutional rights of this appellant.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said United States Circuit Court of Appeals for the Sixth Circuit in the case numbered and entitled on its docket, No. 10,025, Anna Lee Shelton, Appellant, v. United States of America, Appellee, to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States, and that the judgment herein of said Circuit Court of Appeals be reversed by this Court; and your petitioner further prays that the certified copy of the record and the proceedings of the United States Circuit Court of Appeals filed with this petition may be treated as a return to said writ of certiorari, and your petitioner prays that she may have such other and further remedies in the premises as to the Court may seem appropriate and in conformity with the law.

ANNA LEE SHELTON,
Petitioner,

By JOHN Y. BROWN,
Counsel for Petitioner.

Of Counsel:
SYLVESTER LITTLE.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

ANNA LEE SHELTON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINIONS OF COURT BELOW

No written opinions were rendered either in the District Court or the Circuit Court of Appeals.

JURISDICTIONAL GROUNDS

Statement of grounds upon which the jurisdiction of this Court is invoked is set out in the petition to which this brief is attached.

SPECIFICATION OF ERRORS

Specification of errors are set out in the petition under heading III, to which this brief is attached.

STATEMENT OF FACTS

The appellant, Anna Lee Shelton, a citizen of Corbin, Kentucky, was convicted on May 16, 1945, of possessing whiskey without the proper revenue stamps, and the court

sentenced her to a year at hard labor. At the November 1944 term of court a motion to suppress the evidence was filed on behalf of appellant, Anna Lee Shelton, and her brother, William Shelton. Proof was heard on the motion and the case continued until the May 1945 term of court, during which lapse of time appellant filed a brief in support of said motion and the Government filed its brief. The court overruled appellant's motion and thereafter a jury found the appellant, Anna Lee Shelton, guilty but could not agree on William Shelton.

The facts above set out and stipulated in the transcript of record, page 23, and as agreed to between counsel for appellant and for the Government show that there are two questions involved herein; (first) the legality of the search; and (second) the question of whether or not the appellant had the right to know, under Article 6 of the Constitution of the United States, the name of the informer on whose information the Government agents made the search of the defendant's automobile.

It is agreed that the evidence shows that the automobile was the joint property of appellant, Anna Lee Shelton, and her brother, William Shelton; that on the morning in question the appellant, Anna Lee Shelton, was driving the car and her brother, William Shelton, was riding in the car on the back seat. The transcript of record shows that William Shelton had a previous record of convictions of violations of the Revenue laws, but that his sister, the appellant, Anna Lee Shelton, had no record of conviction of violation of any Federal law.

The statements of the government agents, Scanlon and Howard, show that the information upon which the search was made was received in the month of November, 1943 and that the search of appellant's automobile was made

on December 12, 1943, and the statement of agent Howard further shows that from time to time in October the agents claim they received the information on William Shelton they had on three different occasions searched the automobiles in which the said William Shelton was riding and had on none of these occasions found any liquor, but, acting on the information which they had received on William Shelton, they stopped the automobile of appellant, Anna Lee Shelton, which incidentally was the family car of the Sheltons, and searched said automobile and found the liquor in question.

The question involved here is whether or not information on one member of a family, and upon which he had been several times searched, will justify a search of the family car when driven by another member of the family on whom the arresting officers have no previous information. There is no conflict in the testimony as to the person on whom the officers had the information. Such information as they had was on William Shelton and not on Anna Lee Shelton. There is no dispute that Anna Lee Shelton was driving the family car on the morning the search was made. It was testified to that on this particular occasion the officers had no further information, but, relying on the information which they had obtained in the month of October on William Shelton, they stopped and searched the family car being driven by appellant, Anna Lee Shelton.

There is the further question involved in this case as to whether or not appellant, Anna Lee Shelton, had a right to inquire of the Government agents the name of the person giving the information on which the search was made. This inquiry on the part of appellant's attorney was made on the cross examination of the witness, Chad

Howard, and after the motion to suppress the evidence had been heard. Appellant's attorney renewed the motion to suppress the evidence on the trial and further asked that the testimony of the witness, Howard, be taken from the consideration of the jury, but the Court overruled both of said motions.

It is the contention of appellant, Anna Lee Shelton, that under Article 6 of the Constitution she is entitled to be faced by the witnesses who accuse her, and that certainly the search of the automobile, without any information, would have been illegal under Article 4 of the Constitution, and that she had the right to know whether or not the agents had any information, or whether or not the information which they claim to have had was received from a reliable informant, and that the one accusing witness necessary to sustain the Government's charges was the informer who gave the agents their information, and that she is denied her Constitutional rights when she cannot ascertain the name of this hidden witness against her.

ARGUMENT

I

Article 4 of the Constitution of the United States Guarantees Freedom from Search and Seizure.

Article 4 of the Bill or Rights of the Constitution of the United States is as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The leading case on the interpretation of this Article of the Constitution is *Carroll* v. *United States*, 69 Law Ed. 543, 267 U. S. 131.

In the *Carroll* case the Government agents had been personally solicited by defendants to buy whiskey from them on September 29th, and the search of the defendants' car was not made until December 15th, or a lapse of about 2½ months. However, in the meantime the Government agents had witnessed the Carroll boys' automobile going to and from Detroit and Grand Rapids, Michigan. Detroit was the known source of the illicit liquor supply, and, acting upon the knowledge which they had that the Carroll boys were running whiskey, they stopped their car and found the illegal liquor in question. The Court sets out the basis of a legal search as follows:

> "On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid. The 4th Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens."

The Court further said in that case:

> "Having thus established that contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant, we come now to consider under what circumstances such search may be made. It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully

using the highways to the inconvenience and indignity of such a search. Travelers may be so stopped in crossing an international boundary, because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in. But those lawfully within the boundary, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise."

In the instant case, however, the facts are easily distinguishable from the facts in the *Carroll* case. Here, according to the statement of Agent Scanlon, William Shelton, brother of appellant, Anna Lee Shelton, was seen on October 22, 1943, in a 1935 Ford car, bearing Kentucky license No. 5K-541 at Sharpe's Tourist Camp and, according to Scanlon's statement on page 15 of the printed transcript of record, William Shelton was apparently negotiating for the purchase of legal whiskey. Neither in the statement of Scanlon nor of Howard is there any testimony that at any time did either of them ever receive any information on the appellant, Anna Lee Shelton. Agent Scanlon in his statement says that on December 12, while parked on the road between Pineville and Middlesboro, he saw a black Ford automobile, with the same license number as that of the Ford in which he had seen William Shelton at Sharpe's Tourist Camp negotiating for legal whiskey, and that said automobile was being driven by a light-haired, bareheaded woman, later identified as Anna Lee Shelton; that he followed the car, stopped at Middlesboro and picked up Agent Howard; that the car seemed to be heavily loaded, and

they proceeded to search the car without any information on appellant, Anna Lee Shelton, but solely on the information obtained in the month of October against William Shelton, brother of appellant, Anna Lee Shelton.

If Article 4 of the Constitution of the United States guarantees the traveling public against illegal search and seizure, and if, as the Court in the *Carroll* case states "it would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search," then are we further to qualify the protective features of Article 4 of the Constitution by saying it does not protect one member of a family where the officer testifies that they had information on some other member of that family who happens to be in the car at the time. In other words, carried to its ultimate conclusion, this qualification of the Fourth Amendment to the Constitution would completely nullify the purposes of Article 4 and would leave the citizens eventually no protection from illegal search and seizure. It is legendary that there is a black sheep in every family. Shall we, therefore, construe Article 4 to mean that if the Government agents have information on any member of a family that they can thereafter stop and search all members of that family if the one on whom the information is had happens to be in the presence of other members of the family? Does this not amount to a nullification of Article 4 of the Constitution of the United States which protects the average citizen from the inconvenience and indignity of search by Government officers unless such search is upon reliable information?

There is no contention that the agents ever had any information on the appellant, Anna Lee Shelton. That information was on William Shelton.

In the case of *United States* v. *Allen,* 16 Fed. (2) 320, the prohibition agents had received information that a Studebaker automobile, with blue headlights, with driving lights in the center, would be used to haul whiskey at a particular time and place. The officers searched a Studebaker car at the time and place suggested by their informants and the Court held that it was an illegal search although the prohibition officers testified that the car appeared to be heavily loaded and that, together with existing circumstances at the time, they believed it was being used to transport liquor. The Court differentiated the facts in this case from those in the *Carroll* case and held that the arresting officers did not have facts such as would warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched.

The rule laid down in the *Carroll* case is to the effect that searches and seizures are legal if the facts and circumstances within the knowledge of the seizing officers, and of which they have reasonable trustworthy information, are such in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile. The testimony of Agent Howard shows clearly that he and his associate officers were stopping Shelton and searching him apparently wherever they met him. On information, which they say they received in October, Howard said that they several times had searched him before December 12th and that nothing was found, and he further says that on

December 12 they had no information that his car was being used to transport whiskey.

If this procedure is not a violation of the guarantees against unreasonable searches and seizures under the 4th Amendment to the Constitution, then it is hard to conceive of a prosecution that would violate this Amendment. If, because a person has a bad reputation he is thereafter to be subjected to search at the will of Government agents, then the 4th Amendment to the Constitution should have been written to protect only those of good reputation. Suppose a person whose reputation had theretofore been bad should earnestly desire to reform, would he be continuously subjected to search at the will of the officers? If an officer without any additional information can search a man several times within a period of three months, then could he not, by the same logic, thereafter continually search him as long as he lives?

In the *Allen* case, above quoted, the Court distinguished between that case and the *Carroll* case on the basis that in the *Carroll* case the officers had personal knowledge that the defendants were engaged in the transportation of whiskey and in the *Allen* case the officers acted on information, the reliability of which was not disclosed. In this case the officers were acting not upon knowledge upon their part and not upon specific information pertaining to the time and occasion, but upon general information obtained in the month of October against William Shelton, brother of appellant, and on which information they had already searched William Shelton several times and on which they again made the search on December 12.

In the cases of *Turner* v. *United States*, 73 F. (2d) 838 and *Ard* v. *United States*, 54 F. (2d) 358, where the

officers had arrested a known violator of the prohibition laws the facts on which the Court held the search good were that not only did they know the reputation of the defendant but they had specific information that at the time and upon the occasion of the violation the defendant was using his car or would use his car to violate the law. These facts are easily distinguishable from the facts here presented, in that admittedly the prohibition officers had three times searched the cars in which William Shelton was riding, and apparently they were proceeding on the theory that whenever and wherever they saw William Shelton in an automobile that they were free to stop the automobile and search it without any additional information. They further proceeded upon the theory, apparently, that William Shelton need not be driving the car, but so long as he was in an automobile they were privileged, on the information received in October, to thereafter indefinitely search any and all cars in which he might be riding.

In the case of *United States* v. *Blich,* 45 Fed. 627, hereinafter referred to, the Court said that the ruling in the *Carroll* case should not be unduly extended, that inasmuch as the majority decision was accompanied by a strong dissenting opinion, it manifestly laid down a rule which ought not be unduly extended. We submit to the Court that it would be an undue extension of this rule to say that where one member of a family proves himself a black sheep and information is gained by the officers on this member of the family, that thereafter they are free to stop and search all members of the family when in the presence of the black sheep of the family. This would be an extention of the rule of the *Carroll* case which would

amount to a practical nullification of the Fourth amendment to the Constitution.

If the 4th Amendment to the Constitution is to continue as a protection to the citizens of this country in their private lives, it would certainly seem that no such course of procedure as was followed by the officers in this case should be condoned by the Court, and we, therefore, respectfully submit to the Court that the motion to suppress the evidence in this case should have been sustained.

II

The Appellant, Under Article 6 of the Constitution of the United States Has the Right to be Faced by the Witnesses Who Accuse Her and to Cross-Examine Those Witnesses.

Article 6 of the Bill of Rights of the Constitution of the United States is as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense."

The rights of an accused under the above Article of the Bill of Rights of the Constitution of the United States are set forth in the following cases:

United States v. *Blich*, 45 F. 627.
United States v. *Keown, et al*, 19 Fed. Supp. 639.

In the *Blich* case the Court pointed out that the majority decision in the *Carroll* case was accompanied by a very strong dissenting opinion and that while a search and

seizure of an automobile without a warrant is justified under some circumstances, the doctrine is limited in its scope. The Court further said that the rule laid down in the *Carroll* case, as found in the language of the opinion, is manifestly one which should not be unduly extended.

Appellant, Anna Lee Shelton, offered in evidence, in support of her motion to suppress the evidence, the statement of Agent Scanlon which contained no reference to any previous information against herself or her brother, William Shelton, except the statement that William Shelton was seen in the automobile in question attempting to negotiate for the purchase of legal whiskey. Agent Howard, sitting in the court room at the time this statement was offered, supplemented his statement by adding that he had previous information from a reliable source. Appellant sought to learn the name of the person supplying this information, but the Court refused to require the agent to answer.

In the *Blich* case the Court has the following to say:

> "We then come to discuss the feature of the case which involves the refusal of the officer to give the name of his informant. Counsel have cited no cases upon the exact point, although there is language in the case of United States v. Allen (D.C.) 16 F. (2d) 320, and Emite v. United States (C. C. A.) 15 F. (2d) 623, which would indicate that such an element might enter into the consideration of the court in the determination of whether or not a probable cause existed. There may be two sides to this question. The court has no quarrel with the Prohibition Department in its policy of guarding and keeping secret the name of an informant, with the idea of being thereby better enabled to enforce the Prohibition Law. The only question here is as to whether or not, when the matter is presented to a court for the purpose of seeking a

determination of whether, under all the circumstances, there was probable cause, this element of those circumstances may remain undisclosed. It is scarcely an answer to the proposition that an agent testifies that his informant was a reliable person, and that he believed the information so given, unless the court sitting in judgment may have the right to determine whether, under all the circumstances, such information was reliable and the agent was justified in having such belief. A belief must or should rest upon a substantial basis. It is not a question of impugning the motives or doubting the honest belief of the agent in regard to the information which he may have received. It is simply requiring the witness to sustain his motives and his beliefs by all the evidence at his command. It is conceivable that a prohibition agent in the earnestness and eagerness of performing his duty might adopt very shadowy leads. But what is of greater consequence is that an ill-intentioned person might give an officer information which would in many instances lead to humiliation and vexation of the innocent automobile driver upon the public highway, and yet, with the failure to disclose the name of his informant, the prohibition agent would be safely ensconced behind his blanket testimony that he was informed by a reliable person."

In the *Keown* case, supra, District Judge Hamilton exhaustively searched all of the authorities on the question of illegal search and seizure and, acting on the authority of the *Blich* case, above referred to, ruled as follows:

"When the government calls a witness whose testimony is based in part on that of an informer, it subjects the witness to cross-examination and the informer to whatever peril may arise out of such cross-examination. It is a sound rule to keep secret information furnished to the state of violations of its laws, but this commendable public policy must yield to a higher, or at least an equal, right accorded to an accused to have a court investigate the facts material to his offense in

a criminal prosecution, and sometimes the departments of government will be put to a choice of either foregoing a criminal prosecution or disclosing the source of material information necessary to the conduct of orderly judicial procedure.

"The real ground of Agent Witherspoon's refusal to disclose the name of his informant was that he had been instructed by his superior officers to withhold such information. He should not be held in criminal contempt for failing to disclose the name of his informer. The better way to reach the question is to compel the United States to forego the use of the testimony by the agent favorable to it, unless willing to submit to a full cross-examination.

"The question which the court is called upon to decide in this case involves important principles, and I am deciding it in such form that my decision may be promptly reviewed by a higher court, and a uniform rule of law established for the guidance of executive officers. The field of administrative law is necessarily growing with great rapidity under our complex civilization, and the courts should establish with certainty what information in the hands of governmental departments is closed to judicial scrutiny."

RELIEF

The appellant respectfully contends that Article 4 of the Constitution of the United States is a protection to all of the citizens of this country from illegal search and seizure; that if the officers in this case can stop appellant's automobile simply because her brother, on whom they claim they have information, is riding in the back seat, then such procedure is equivalent to a complete nullification of all the rights and privileges which the citizens of this country are supposed to enjoy under Article 4 of the Constitution of the United States and that it amounts to a judicial repeal of Article 4 of the Constitution.

Appellant further urges that she has the right, under Article 6 of the Constitution of the United States, to freedom from search unless such search is made upon reliable information, and that, certainly, in the absence of reliable information, the lower court would have sustained her motion to suppress the evidence; that, therefore, the most material witness against her was the supposed informant who gave Agent Howard the information on her brother on which the search was made; that, therefore, she should have been allowed the information as to who the informant was in order that she might subpoena said informant into court and cross-examine this most material, but hidden, witness; that she has been deprived of her Constitutional rights both under Article 4 and Article 6 of the Constitution of the United States; that the protective features of both of these Articles should not be nullified by conduct of government agents in searching indiscriminately the automobiles of highway users upon information against other members of the family who might be accompanying the driver of the car.

The appellant, therefore, respectfully asks that this Honorable Court order the suppression of the evidence introduced in the lower court and that her motion to suppress the evidence be sustained, and that she be allowed to know the name of her accuser who gave the information on which the search and seizure was made.

Respectfully submitted,

JOHN Y. BROWN,
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Of Counsel:
SYLVESTER LITTLE,
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CITATIONS

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674832—43

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 595

ANNA LEE SHELTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On May 8, 1944, petitioner and her brother, William M. Shelton, and one Charley Taylor, were indicted (R. 3–4) in the United States District Court for the Eastern District of Kentucky for possessing whiskey upon which the internal revenue tax had not been paid, in violation of Section 2803 of the Internal Revenue Code. Prior to her trial, petitioner filed a motion (R. 1–2) in the trial court to suppress as evidence 32 gallons of illicit whiskey which had been seized by agents of the Alcohol Tax Unit from an automobile which she was driving, on the ground that the

search and seizure were made without a search warrant and without probable cause. A hearing on the motion was had, at which the Government established that petitioner and her brother, William Shelton, were co-owners of a 1935 Ford Sedan automobile which bore Kentucky license plates No. 5K–541; that in October 1943 agent Howard of the Alcohol Tax Unit received information that William Shelton was using this automobile for transporting illicit whiskey; that agent Howard was familiar with William Shelton's reputation "as a violator"; that on December 12, 1943, agent Scanlan of the Alcohol Tax Unit observed the Ford automobile in question on a highway between Pineville and Middleboro, Kentucky; that petitioner was driving the car, which "appeared to be heavily loaded"; that William Shelton was observed in the rear seat in a slouched position with his coat turned up around his neck and his hat down over his forehead; that after observing the car from another vantage point agents Scanlan and Howard stopped it; that they found in the car a large quantity of whiskey on which no tax had been paid; and that petitioner told the agents that the whiskey belonged to her (R. 15–17, 23–24).

The motion to suppress was overruled (R. 2, 17), and petitioner was thereafter convicted at her jury trial and was sentenced to imprisonment

for a term of one year and one day (R. 5).[1] Upon appeal to the Circuit Court of Appeals for the Sixth Circuit, the judgment was affirmed, without opinion (R. 25).

In this Court, petitioner urges (Pet. 4, 9–16) that the agents who searched the automobile had no probable cause for believing that she was transporting illicit whiskey and that therefore the whiskey which was found in the car was illegally seized, insofar as she was concerned. We think petitioner misconceives the nature of the constitutional guarantee against unreasonable searches and seizures. In our view, if the agents had probable cause for believing that petitioner's brother was then using the automobile for the transportation of illicit whiskey, they were entitled to stop the car and search it. Any evidence obtained as a result of a lawful search was available for use not only against petitioner's brother, but also against anyone else whom it incriminated. When it is recognized that the agents had information that William Shelton was engaged in bootlegging activities and had been using the Ford automobile for that purpose, that on the day of the search he was observed in the automobile attempting to disguise his presence, and that the automobile was "heavily loaded," we think there

[1] The jury disagreed as to the guilt of petitioner's brother, William Shelton, and it acquitted her codefendant Charley Taylor (R. 3).

can be no serious question that the agents had a reasonable basis for believing that the automobile contained illicit whiskey. In these circumstances, the search being legal, petitioner is in no position to complain because the seized evidence was used against her as well as against her brother at their joint trial. Cf. *Carroll* v. *United States,* 267 U. S. 132; *Husty* v. *United States,* 282 U. S. 694; *Coupe* v. *United States,* 113 F. 2d 145 (App. D. C.), certiorari denied, 310 U. S. 651; *United States* v. *Murray,* 51 F. 2d 516 (D. Md.).

Petitioner also urges (Pet. 4–5, 16–19) that the trial judge erred in not suppressing the evidence at the trial when agent Howard declined on cross-examination at that time to reveal the source of his information that William Shelton was using the automobile to transport illicit whiskey. Immediately upon agent Howard's refusal to reveal his source of information, the trial judge asked the witness "if his source of information was personally known to him and if he knew the source to be reliable and trustworthy" and upon the witness answering in the affirmative, the trial judge overruled the motion of petitioner's counsel to suppress the evidence (R. 23–24). Apart from any question of public policy forbidding the disclosure of an informer's identity (see *Scher* v. *United States,* 305 U. S. 251, 254–255), we believe that the trial judge properly declined to permit petitioner to inquire

into the question at the trial. The question of the admissibility of the seized evidence had been tried and judicially determined prior to trial at the hearing on petitioner's motion to suppress. If petitioner desired to inquire into the source of the agents' information, the question should have been raised at that time. When the case came to trial, the sole issue was whether petitioner possessed illicit whiskey; the attempted inquiry into the source of the agents' information bore no possible relevance to the issue at the trial. Accordingly, we submit that the trial judge properly declined to compel agent Howard to reveal the source of his information at the risk of having his testimony rejected if he failed to do so, as petitioner had requested (R. 23). See *Segurola* v. *United States*, 275 U. S. 106, 111–112.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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